<center>REMARKS</center>

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request entry of the amendment and reconsideration of the claims in view of the remarks presented below.

Claims 1, 6, 7, 10, 13 and 18 have been amended. Claims 19-23 have been withdrawn. Thus, claims 1-18 are pending in the application.

Claims 6, 10 and 18 were amended to correct inadvertent typographical errors and to provide proper antecedent basis for the terms of the claims. No new matter was added. Applicant submits that the rejections under 35 U.S.C. § 112 are now moot and request that the rejections be withdrawn.

Claims 1-18 were rejected under 35 U.S.C. 102(b) as being anticipated by Tomkow (International Pub. No. WO 01/10090). Applicant respectfully traverses this rejection.

It is axiomatic that, to anticipate a claim, a reference must disclose each and every element or step of the claim. Tomkow does not teach, or even suggest, adding, at a server, a pixel that is capable of being altered to indicate that the message has been opened to the message before the message is sent to a recipient, as is claimed in amended claim 1. The message, including the pixel, is then sent to the recipient, where, when the message is opened, the pixel is altered to indicate the opening of the message, and then the message and the altered pixel is transmitted back to the server for further processing before the message and altered pixel are sent to the sender of the message.

The overview of Tomkow cited by the Examiner at page 12, lines 13-28, only teaches altering the message to include a "tag" to indicate that the message has been registered, or the tag may contain instructions, World Wide Web addresses, or links that invite and allow the recipient to send a registered reply to the message. There is no mention of inclusion of a pixel is capable of being altered by the opening of the message by a recipient. All of the alterations disclosed by Tomkow are static, that is, they are informational in character, or require the recipient to take some affirmative action. The pixel claimed by Applicant is automatically altered when the recipient opens the message, and the mere act of opening the message causes the message and the altered pixel to be transmitted back to the server.

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The "implementation details" cited by the Examiner at page 13, line 19 to page 14, line 31 of Tomkow also do not disclose the pixel claimed by Applicant in amended claim 1. Furthermore, the subject matter of pages 22-25 of Tomkow also does not teach or even suggest such a pixel.

The cited passages of Tomkow only disclose the provision of MUA notifications by a recipient's email client. Tomkow states that such notifications are not provided by all recipient systems (Tomkow, page 13, ll. 20-25). Moreover, such notifications are separate emails generated by the recipient's MUA; they do not include the message and altered pixel claimed by Applicant. Tomkow merely discloses adding specific headers to a message to elicit a MUA notification in such a manner as to allow a server, upon reception of the MUA notification, to identify the original message associate by the MUA and then to send the MUA along with the message to be passed along to the original sender of the message as an "RPost Reading receipt." Thus, Tomkow only discloses a system that requires matching a MUA generated notice with a message.

This is completely different that the claimed method where an alterable pixel is added to a message before the message is sent to the recipient, and the mere opening of the message by the recipient causes the pixel to be altered and the message and altered pixel sent back to the server. The claimed invention causes the pixel to be altered and the message and altered pixel sent back to the server even if the recipient's MUA is not configured to provide a read receipt. Thus, the invention of amended claim 1 ensures that an indication of whether the message has been opened by a recipient is provided to a sender even if the recipient's email client does not otherwise provide such an indication.

Claim 7 was amended similarly to claim 1 to recite that the message contains an alterable pixel that is altered to indicate that the message has been opened when the message is opened by a recipient, and that the message and the indication that the message has been opened is transmitted back to the server for further processing before it is forwarded to the sender. As stated above, Tomkow neither teaches nor suggests transmitting a message with such an alterable pixel, nor altering the pixel to indicate that the message has been opened by the recipient when the message is opened.

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Claim 13 was also amended similarly to claims 1 and 7. As amended, claim 13 recites that a pixel capable of being altered to indicate that a message has been opened by a recipient is added to a message at a server before the message and alterable pixel are sent to the recipient. Amended claim 13 also recites altering the pixel when the message is opened by the recipient and transmitting eh message and altered pixel from the recipient to the server. As stated previously, Tomkow neither teaches nor suggests transmitting a message with such an alterable pixel, nor altering the pixel to indicate that the message has been opened by the recipient when the message is opened.

Applicant also respectfully submits that amended claims 1, 7 and 13 are not obvious in view of Tomkow. Tomkow only discloses the use of emails provided by a recipient's MUA as notifications that a message has been opened. Such messages are generated by the recipient's MUA, and do not include a copy of the original message. Tomkow teaches adding headers to a message to ensure that the MUA notifications are directed to an RPost server, where the MUA notification is matched to the original message.

In contrast to the teachings of Tomkow, amended claims 1, 7 and 13 all teach sending a message having an alterable pixel to a recipient. When the recipient opens the message, the pixel is altered to indicate that the message has been opened, and then a copy of the message, and the altered pixel, are sent back to the server. Thus, the indication that the message has been opened and the message do not need to be matched at the server when the indication that the message has been opened is received by the server, as must occur when using the system disclosed by Tomkow. This eliminates the possibility of mismatching the message and the indication that the message has been opened. Moreover, using the methods claimed in amended claims 1, 7, and 13, the server can provide the sender with an indication that the message has been read even if the recipient's MUA is not configured to provide such notifications. Tomkow does not provide solutions to these problems, nor would the solution provided by the methods of the amended claims be ascertainable from Tomkow by one skilled in the art.

For all of the reasons above, Applicant respectfully submits that amended claims 1, 7, and 13, and their dependent claims, are patentable over the cited art and respectfully request that the rejections be withdrawn and that claims 1-18 be allowed.

CONCLUSION

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request reconsideration of the claims in view of the remarks presented. In light of the above amendments and remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Should the Examiner have any questions concerning the above amendments and arguments, or any suggestions for further amending the claims to obtain allowance, Applicants request that the Examiner contact Applicants' attorney, John Fitzgerald, at 310-242-2667.

The Commissioner is authorized to credit any overpayment or charge any additional fees in this matter to our Deposit Account No. 06-2425.

Date: March 27, 2009   Respectfully submitted,

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